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| MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE | | EFFECTIVE DATE 12/13/1999 | NUMBER 03.04.105 |
| SUBJECT INFORMED CONSENT TO MEDICAL CARE | | SUPERSEDES 03.04.105 (02/22/99) | |
| | | AUTHORITY MCL 333.5127; 333.6121; 333.9132; 722.4; 791.203 | |
| | | ACA STANDARDS 3-4372; 3-4376 | |
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POLICY STATEMENT:

Bureau of Health Care Services staff shall obtain informed consent when required before providing medical care to a prisoner.

RELATED POLICIES:

- 03.04.107 Advance Directives for Health Care
- 04.06.120 Hunger Strike
- 04.06.183 Voluntary and Involuntary Treatment of Mentally Ill Prisoners

POLICY:

DEFINITIONS

- A. Adult Prisoner: A prisoner who is 18 years or age or older.
- B. Emancipated Minor: A person under 18 years of age who is married or for whom a court has issued an order of emancipation.
- C. Informed Consent: The prisoner's agreement to receive medical care (i.e., medical treatment or procedures) after the nature, consequences, risks and alternatives concerning the proposed care have been explained.
- D. Medical Service Provider: A qualified health professional who is a physician, physician assistant or nurse practitioner.
- E. Minor Prisoner: A prisoner who is under 18 years of age.
- F. Qualified Health Professional: A physician, physician assistant, nurse practitioner, registered nurse, dentist, dental hygienist, psychologist, social worker or other trained health care professional licensed by the State of Michigan or certified to practice within the scope of his/her training and licensure or certification.

GENERAL INFORMATION

- G. Informed consent shall be obtained when consent is required under prevailing medical community standards before medical care is provided, unless the medical treatment or procedure is authorized by state or federal law or Department policy (e.g., blood sample for mandatory HIV testing or DNA profiling, body cavity search), including situations set forth in this policy.
- H. When informed consent is required, Form CHJ-149 "Informed Consent to Surgery, Anesthetics, Medical Treatment and Procedures" shall be used to obtain consent to perform invasive or surgical procedures or to administer general anesthesia from a prisoner or, if a minor prisoner, from his/her parent or guardian. For dental surgery, Form CHJ-103 "Information Concerning Surgical Removal of Teeth" shall be used instead of Form CHJ-149.

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- I. When informed consent is required from a parent or guardian to provide a minor prisoner with medical care not addressed in Paragraph H, Form CHJ-217 "Consent to Routine, Non-Surgical Medical Care of a Minor" shall be used.
- J. Verbal consent, or implied consent if applicable, is sufficient whenever informed consent is required from an adult prisoner, or a minor prisoner capable of providing informed consent, to provide the prisoner with medical care not addressed in Paragraph H.
- K. A prisoner who appears to be engaged in a hunger strike shall be managed as set forth in PD 04.06.120 "Hunger Strike".
- L. This policy does not apply to involuntary mental health treatment provided to prisoners pursuant to PD 04.06.183 "Voluntary and Involuntary Treatment of Mentally Ill Prisoners".

ADULT PRISONERS UNABLE TO GIVE CONSENT

- M. An adult prisoner is presumed capable of providing informed consent unless s/he has a mental illness, mental defect or medical illness which affects the prisoner's ability to understand his/her medical condition and the nature of the medical care being offered. Such a prisoner is incapable of providing informed consent for the specific medical care being offered at the time it is offered.
- N. When an adult prisoner requires emergency medical care due to a non-life threatening condition and is deemed by the treating physician to be incapable of providing informed consent, informed consent shall be obtained from one of the following before the medical care is provided:
 - 1. The designated patient advocate, if the prisoner has executed an advance directive pursuant to PD 03.04.107 "Advance Directives for Health Care".
 - 2. The legal guardian of the prisoner, if one has been appointed and there is no designated patient advocate.
 - 3. The prisoner's spouse if there is no designated patient advocate or legal guardian.
 - 4. The prisoner's parent, adult child or adult sibling if there is no designated patient advocate, legal guardian or spouse.
- O. If unable to contact any of the persons identified in Paragraph N, the Administrator of the Bureau of Health Care Services (BHCS) shall contact the Administrator of the Office of Policy and Hearings (OPH). The Administrator of OPH shall in turn contact the Department of Attorney General if it is necessary to appoint a guardian or to initiate other legal proceedings.
- P. In a life threatening emergency when there is inadequate time to obtain informed consent, or the prisoner cannot give consent due to his/her medical condition, an adult prisoner may receive medical care from a qualified health professional without consent to the extent deemed necessary by the qualified health professional. The emergency care shall be brought to the attention of the Administrator of BHCS or designee as soon as possible. If continued medical care is necessary, and the prisoner remains unable to give informed consent, consent shall be obtained as set forth in Paragraphs N and O prior to providing further medical care.
- Q. Unless there is a legal guardian or a designated patient advocate, an adult prisoner with a chronic medical condition who is deemed by the treating physician to be incapable of providing informed consent shall be referred to the Administrator of BHCS or designee as soon as the prisoner's competency becomes an issue. The Administrator of BHCS or designee shall contact the Administrator of OPH who shall in turn contact the Department of Attorney General if it is necessary to appoint a guardian or to initiate other legal proceedings.

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MINOR PRISONERS

- R. A minor prisoner may give informed consent under the following circumstances:
1. S/he is an emancipated minor;
 2. S/he is being offered medical care for venereal disease or Human Immunodeficiency Virus (HIV);
 3. S/he is being offered medical care for substance abuse;
 4. She is being offered prenatal or pregnancy-related medical care, excluding abortion; or,
 5. S/he is being offered medical care for other than reproductive sterilization (e.g., vasectomy; tubal ligation) and attempts to promptly locate the prisoner's parent or guardian have been unsuccessful. Attempts by BHCS staff to locate the parent or guardian shall be documented in the prisoner's health record.
- S. Informed consent is not required to provide medical care to a minor prisoner if there is a life-threatening emergency where there is inadequate time to obtain informed consent. In such cases, the minor prisoner may receive medical care from a qualified health professional without consent to the extent deemed necessary by the qualified health professional. The emergency care shall be brought to the attention of the Administrator of BHCS or designee as soon as possible. Informed consent is required to be obtained prior to providing any continued medical care.
- T. Except as set forth in Paragraphs R and S, informed consent must be obtained from the minor prisoner's parent or guardian prior to providing medical care to a minor prisoner. The parent's or guardian's consent shall be documented on Form CHJ-217 "Consent to Routine, Non-Surgical Medical Care of a Minor" or Form CHJ-149 "Informed Consent to Surgery, Anesthetics, Medical Treatment and Procedures". For dental surgery, Form CHJ-103 "Information Concerning Surgical Removal of Teeth" shall be used instead of Form CHJ-149.
- U. Informed consent shall be obtained from a minor prisoner capable of providing informed consent in the same manner as an adult prisoner.

REFUSAL OF RECOMMENDED MEDICAL CARE REQUIRING INFORMED CONSENT

- V. If an adult prisoner refuses medical care and the refusal is not deemed by the medical service provider to pose a serious threat to the prisoner's health, the refusal shall be documented by the medical service provider in the Progress Notes (CHJ-130). The recommended care will not be provided.
- W. If a competent adult prisoner refuses recommended medical care that is necessary to prevent permanent or serious ill effects other than death, a medical service provider shall meet with the prisoner to fully explain the need for the treatment. If the prisoner continues to refuse to consent, the refusal shall be documented on Form CHJ-147 "Release from Responsibility for Medical Treatment". The recommended care will not be provided.
- X. If a competent adult prisoner refuses medical care deemed necessary by a medical service provider to prevent death, the medical service provider shall meet with the prisoner to fully explain the need for the medical care. The information provided to the prisoner shall be fully documented in the prisoner's health record. If the prisoner continues to refuse to consent, the medical service provider shall contact the Administrator of BHCS or designee. The Administrator of BHCS or designee shall contact the Administrator of OPH, who shall contact the Department of Attorney General if it is necessary to appoint a guardian or initiate other legal proceedings.

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- Y. If a parent or legal guardian of a minor prisoner, or a minor prisoner capable of providing informed consent for one of the reasons set forth in Paragraph R, refuses medical care recommended for the prisoner, a medical service provider shall meet with the prisoner or shall contact the parent/guardian to fully explain the need for the medical care. If the prisoner or parent/guardian continues to refuse to consent, the medical service provider shall contact the Administrator of BHCS or designee, who shall contact the Administrator of OPH. The Administrator of OPH shall contact the Department of Attorney General if it is necessary to appoint a guardian or initiate other legal proceedings.

OPERATING PROCEDURES

- Z. The Administrator of BHCS shall ensure that within 60 days of its effective date procedures implementing this policy directive are developed.

AUDIT ELEMENTS

- AA. A Primary Audit Elements List has been developed and will be provided to the Administrator of BHCS to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

BM:OPH:11/29/99